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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,275	01/30/2001	Aaron Strand	8160.16016-CIP DIV	2989

26308 7590 09/05/2003

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EXAMINER

PASCUA, JES F

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 09/05/2003

27

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/774,275

Applicant(s)

STRAND ET AL.

Examiner

Jes F. Pascua

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 75-117 is/are pending in the application.
- 4a) Of the above claim(s) 79,80,99 and 100 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 75-78,81-98 and 101-117 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5,7,11,12,15, 18,19,21 & 22.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group XX, claims 75-78, 81-98 and 101-117, in Paper No. 23 is acknowledged.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the perforations (claims 90 and 110), the scoring (claims 91 and 111), the microperforations (claims 92 and 112), the sheet of web material being a "multiple laminate film" (claims 93, 94, 113 and 114) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 116 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The specific location of the "at least one tear tape structure" has not been defined to warrant the language "at least one location between said tear tape structure and said opening".

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 75-78, 81-85, 89, 90, 92, 96-98, 101-105, 109, 110, 112 and 117 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Plourde.

Regarding claims 92 and 112, the generic perforations 40 of Plourde are considered to include and meet the structure of applicant's "microperforations".

7. Claims 75-78, 81-85, 89, 90, 92, 96-98, 101-105, 109, 110, 112 and 117 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Plourde.

Regarding claims 92 and 112, the generic perforations 40 of Plourde are considered to include and meet the structure of applicant's "microperforations".

8. Claim 117 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Peppiatt '868.

9. Claim 117 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Boeckmann et al. '639.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 86-88 and 106-108 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plourde.

Plourde discloses the claimed invention except for the areas of structural weakness extending nonlinearly across a predetermined dimension of the sheet of web material. It would have been an obvious matter of design choice to make the areas of structural weakness in Plourde extend nonlinearly across a predetermined dimension of the sheet of web material. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

12. Claims 91 and 111 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plourde.

Plourde discloses the claimed invention except for the areas of structural weakness comprising scoring. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the perforations 40 of Plourde with scoring since the Examiner takes Official Notice of the equivalence of scores and perforations for their use in the bag art and the selection of any of these known equivalents to provide the bag with an area of structural weakness would be within the level of ordinary skill in the art.

13. Claims 93-95 and 113-115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plourde.

Plourde discloses the claimed invention except for the sheet of web material forming the bag comprising a multiple laminate film. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a multiple laminate film for the sheet of web material in Plourde, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. As a note, using a multiple laminate film for the sheet of web material in Plourde would inherently result in "at least one layer of material comprising" the tear path of the perforations 40.

Regarding claims 95 and 115, Plourde discloses the claimed invention, as discussed above, except for tear path being hermetic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to hermetically

seal the tear path of Plourde since it was known in the art that hermetically sealing tear paths in bags prevents the bag contents from leaking through the tear path and prevents air leaking in or out of the bag through the tear path.

14. Claim 116 is rejected under 35 U.S.C. 103(a) as being unpatentable over Plourde.

Plourde discloses the claimed invention except for the sheet of web material 10 having at least one tear tape structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the web material of Plourde with at least one tear tape structure since it was known in the art that tear tape structures facilitate the tearing of areas of structural weakness on bags.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 703-308-1153. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1078.



Jes F. Pascua  
Primary Examiner  
Art Unit 3727

JFP